

RESPONSE AFTER FINAL
U.S. Appln. No. 09/717,088

REMARKS

On page 2 of the Office Action, the Examiner maintains the rejection of Claims 22-38 under 35 U.S.C. § 103 as being unpatentable over Gleichenhagen et al in view of Tipton et al and/or Modak et al.

Specifically, the Examiner contends that contrary to Applicant's position, Gleichenhagen et al does not teach that all of the known film-forming polymers are disadvantageous, i.e., the Examiner contends that this reference only discloses that polymers containing-dimethylaminoethylmethacrylate units, polyvinyl pyrrolidone and poly-2-ethoxy ethyl methacrylate have undesirable properties.

Hence, the Examiner concludes that Applicant's contention that Gleichenhagen et al teaches disadvantages using conventional film-forming polymers for a wound-bandage sprayable solution is unpersuasive.

For the following reasons, Applicant respectfully traverses the Examiner's rejection.

Gleichenhagen et al is a reference over 25 years old. It is directed to a specific polymer film for application to wounds. Gleichenhagen et al deals with the problems of spray-on bandages (see columns 1-3 thereof).

Applicant respectfully submits that the Examiner's contention regarding the teachings of Gleichenhagen et al is technically incorrect. Whilst the portion of Gleichenhagen et al, at column 3, lines 12-32, refers, by way of example (see below), to disadvantages of the particular polymeric types referred to by the Examiner, the Examiner has

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overlooked the problems of sprayable polymer compositions in general discussed at column 1 and column 2, for example at column 1, lines 33-64, and column 1, line 65 through column 3, line 11 of Gleichenhagen et al. The teachings of Gleichenhagen et al, at column 3, lines 9-11, is particularly relevant and is set out below:

All these requirements [performance requirements set out in column 2] in one polymer are difficult to achieve and were heretofore unachieved until the present invention was made.

This indicates that the mechanical properties, performance properties adherence, discoloration etc required of such compositions was not provided in the prior art. *of the G.*

Furthermore, the specific text the Examiner relies on at page 3, lines 12-32, of Gleichenhagen et al as being limited to specific problems with certain polymers, is introduced by the words "Thus, for example...". Clearly comments in Gleichenhagen et al are not limited to problems with the polymers referred to. Applicant respectfully submits that it is clear from the above that the Examiner has technically mis-characterized the teachings of Gleichenhagen et al.

On page 3 of the Office Action, the Examiner notes Applicant's position that Gleichenhagen et al teaches that the antiseptic or anti-bacterial component must be used in an organic solvent to overcome the problems of the prior art, such as lack of solubility. However, it is the Examiner's position that the lack of solubility refers to using prior art film-forming polymers in solvent-propellant mixtures which would

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provide motivation for one skilled in the art to opt to a pump-spray formulation instead. Further, the Examiner states that using active ingredients in a soluble inorganic solvent, such as ethanol, does not necessarily render using a water-soluble ingredient nonobvious.

Applicant respectfully submits that the Examiner's position can only be made in hindsight, which is legally improper.

In addition, on page 3 of the Office Action, the Examiner notes Applicant's arguments that Gleichenhagen et al does not teach the use of a plasticizer. However, it is the Examiner's position that it is well-known to employ plasticizers in wound-dressing sprayable compositions.

Gleichenhagen et al describes a film-forming sprayable stable solution which does not require a plasticizer. Thus, there would be no motivation to one skilled in the art to add a plasticizer to the composition of Gleichenhagen et al even though plasticizers were known to one skilled in the art. Again, the Examiner's position can only be made in hindsight, which is legally improper.

In the paragraph bridging pages 3-4 of the Office Action, the Examiner notes Applicant's arguments that Tipton et al is directed to a two-part composition and contains water, whereas the present invention is a one-step composition that does not contain water. However, it is the Examiner's position that Gleichenhagen et al teaches a one-step sprayable composition and Tipton et al is merely cited to show that it is well-known to add an anti-fungal agent to a wound-dressing sprayable composition.

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In any event, the Examiner takes the position that Tipton et al is not limited to a two-part composition (see column 3, lines 41-56 thereof).

Applicant respectfully submits that this combination rejection can only be made in hindsight, which is legally improper. Gleichenhagen et al and Tipton et al are incompatible teachings. They are completely different polymer systems, the film forming mechanisms are completely distinct, and the respective components of the Tipton et al and Gleichenhagen et al compositions are disparate. Thus, the teachings thereof are simply not combinable. *same art*

On page 4 of the Office Action, the Examiner states that while Modak et al relates to a gel composition, the combination of Modak et al and Gleichenhagen et al suggests a pump sprayable composition.

Again, the Examiner's position can only be made in hindsight, which is legally improper.

Tipton et al, at column 3, lines 41-56, describes that compositions can be dispensed via a pump, rather than by aerosol. However, Modak et al relates to a gel composition. Thus, the combination of Modak et al, Tipton et al and Gleichenhagen et al does not suggest a pump sprayable composition.

Gleichenhagen et al is clearly an aerosol administerable composition, and Modak et al is anything but aerosol administerable. Thus, a pump sprayable composition would not have been obvious, nor would there have been any motivation to

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adopt a composition which is administered in this way from the cited references.

Furthermore, on page 4 of the Office Action, the Examiner notes Applicant's argument that the combined references does not teach the "progressive disintegration over a 24 to 48 hour period". However, the Examiner states that this is the resulting property of the obvious variation of the cited prior art.

Again, the Examiner's position can only be made in hindsight, which is legally improper.

Finally, in the paragraph bridging pages 4-5 of the Office Action, the Examiner notes Applicant's argument that the Examiner is using improper hindsight.

The Examiner appears to have misunderstood Applicant's argument with respect to hindsight. The argument is that the Examiner's combination is based upon a lack of motivation to combine the teachings in the cited references to achieve the present invention. The Examiner has failed to address the motivation issue.

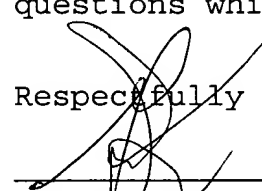
Accordingly, Applicant respectfully submits that the present invention is not taught or suggested in Gleichenhagen et al, alone or when combined with the teaching of Tipton et al and Modak et al, and thus requests withdrawal of the Examiner's rejection.

In view of the arguments set forth above, reexamination, reconsideration, and allowance are requested.

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The Examiner is invited to contact the undersigned at his Washington telephone number on any questions which might arise.

Respectfully submitted,



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